

Calendar No. 36

105TH CONGRESS
1ST SESSION**S. 515**

To provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 1997

Mr. ASHCROFT introduced the following bill; which was read twice and ordered to be placed on the calendar

A BILL

To provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Liability Reform for
5 Volunteer Services Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the increasingly litigious nature of the legal
2 profession in the United States has created an un-
3 necessary and ultimately harmful barrier between
4 the traditional desire of individuals to help other in-
5 dividuals and their ability to act on those desires;

6 (2) the cost of lawsuits, excessive, unpredict-
7 able, and often arbitrary damage awards, and unfair
8 allocations of liability have a direct and chilling ef-
9 fect on the spirit of volunteerism and the provision
10 of charitable service in the United States;

11 (3) arbitrary and capricious damage awards
12 against volunteers and charitable institutions have
13 contributed considerably to the high cost of liability
14 insurance, making it difficult and often impossible
15 for volunteers and volunteer service organizations to
16 be protected from liability as those volunteers and
17 many volunteer service organizations serve the public
18 without regard to receiving any personal or institu-
19 tional economic benefits from that service;

20 (4) as a result, volunteer service organizations
21 throughout the United States have been adversely
22 affected and often debilitated as volunteers have re-
23 fused to help because of a fear of frivolous lawsuits;

24 (5) without a resurgence in volunteerism, the
25 essential services that volunteer service organizations

1 provide, including crisis counseling, volunteer rescue
2 services, coaches and referees for sports activities of
3 children, and support for the elderly, will continue to
4 diminish;

5 (6) clarifying and limiting the personal liability
6 risks assumed by individuals and institutions who
7 volunteer to help others without benefit to them-
8 selves is an appropriate subject for Federal legisla-
9 tion because—

10 (A) of the national scope of the problems
11 created by the legitimate fears of volunteers
12 about frivolous, arbitrary, or capricious law-
13 suits; and

14 (B) the citizens of the United States de-
15 pend on, and the Federal Government expends
16 funds on, numerous social programs that de-
17 pend on the services of volunteers; and

18 (C) it is in the interest of the Federal Gov-
19 ernment to encourage the continued operation
20 of volunteer service organizations and contribu-
21 tions of volunteers because the Federal Govern-
22 ment lacks the capacity to carry out all of the
23 services provided by such organizations and vol-
24 unteers; and

1 (7) liability reform for volunteer service organi-
2 zations will promote the free flow of goods and serv-
3 ices, lessen burdens on interstate commerce and up-
4 hold constitutionally protected due process rights
5 and that liability reform is thus an appropriate use
6 of the powers contained in article I, section 8, clause
7 3 of the United States Constitution, and the four-
8 teenth amendment to the United States Constitu-
9 tion.

10 (b) PURPOSES.—The purposes of this Act are to pro-
11 vide protection from personal financial liability for volun-
12 teers and volunteer service organizations that provide vol-
13 unteer services that are conducted in good faith—

14 (1) to promote the interests of social service
15 program beneficiaries and taxpayers; and

16 (2) to sustain the availability of programs, vol-
17 unteer service organizations, and governmental enti-
18 ties that depend on volunteer contributions and serv-
19 ices; and

20 (3) to provide the protection by—

21 (A) placing reasonable limits on punitive
22 damages;

23 (B) ensuring the fair allocation of liability
24 in certain civil actions; and

1 (C) establishing greater fairness, rational-
2 ity, and predictability in the civil justice system
3 of the United States.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) CLAIMANT.—

7 (A) IN GENERAL.—The term “claimant”
8 means any person who asserts a claim for dam-
9 ages in an action covered by this Act and any
10 person on whose behalf such a claim is as-
11 serted.

12 (B) CLAIMANTS FOR CERTAIN CLAIMS.—If
13 a claim described in subparagraph (A) is as-
14 serted through or on behalf of—

15 (i) an estate, the term includes the
16 claimant’s decedent; or

17 (ii) a minor or incompetent, the term
18 includes the claimant’s legal guardian.

19 (2) CLEAR AND CONVINCING EVIDENCE.—

20 (A) IN GENERAL.—The term “clear and
21 convincing evidence” is that measure or degree
22 of proof that will produce in the mind of the
23 trier of fact a firm belief or conviction as to the
24 truth of the allegations sought to be estab-
25 lished.

1 (B) DEGREE OF PROOF.—The degree of
2 proof required to satisfy the standard of clear
3 and convincing evidence shall be—

4 (i) greater than the degree of proof
5 required to meet the standard of prepon-
6 derance of the evidence; and

7 (ii) less than the degree of proof re-
8 quired to meet the standard of proof be-
9 yond a reasonable doubt.

10 (3) COMPENSATORY DAMAGES.—The term
11 “compensatory damages” means damages awarded
12 for economic and noneconomic loss.

13 (4) ECONOMIC LOSS.—The term “economic
14 loss” means any pecuniary loss resulting from harm
15 (including the loss of earnings or other benefits re-
16 lated to employment, medical expense loss, replace-
17 ment services loss, loss due to death, burial costs,
18 and loss of business or employment opportunities) to
19 the extent recovery for such loss is allowed under ap-
20 plicable State law.

21 (5) HARM.—The term “harm” means—

22 (A) any physical injury, illness, disease, or
23 death;

24 (B) damage to property; or

1 (C) economic loss, including any direct or
2 consequential economic loss.

3 (6) HEALTH CARE PROVIDER.—The term
4 “health care provider” means any person, organiza-
5 tion, or institution that—

6 (A) is engaged in the delivery of health
7 care services in a State; and

8 (B) is required by the applicable laws (in-
9 cluding regulations) of a State to be licensed,
10 registered, or certified by the State to engage in
11 the delivery of health care services in the State.

12 (7) NONECONOMIC LOSS.—The term “non-
13 economic loss” means subjective, nonmonetary loss
14 resulting from harm, including pain, suffering, in-
15 convenience, mental suffering, emotional distress,
16 loss of society and companionship, loss of consor-
17 tium, injury to reputation, and humiliation.

18 (8) PERSON.—The term “person” means any
19 individual, corporation, company, association, firm,
20 partnership, society, joint stock company, or any
21 other entity (including any governmental entity).

22 (9) PUNITIVE DAMAGES.—The term “punitive
23 damages” means damages awarded against any per-
24 son to punish or deter that person or any other per-
25 son, from engaging in similar behavior in the future.

1 (10) STATE.—The term “State” means any
 2 State of the United States, the District of Columbia,
 3 the Commonwealth of Puerto Rico, the Northern
 4 Mariana Islands, the Virgin Islands, Guam, Amer-
 5 ican Samoa, and any other territory or possession of
 6 the United States or any political subdivision of any
 7 of the foregoing.

8 (11) VOLUNTEER SERVICE ORGANIZATION.—
 9 The term “volunteer service organization” means a
 10 not-for-profit organization (other than a health care
 11 provider) organized and conducted for public benefit
 12 and operated primarily for charitable, civic, edu-
 13 cational, religious, welfare, or health purposes.

14 (12) VOLUNTEER SERVICES.—The term “volun-
 15 teer services” means services provided, in good faith,
 16 without compensation or other pecuniary benefit
 17 (other than reimbursement of expenses incurred in
 18 providing such services) inuring to the benefit of the
 19 service provider or any other person (other than the
 20 recipient of the volunteer service), and within the
 21 scope of the official functions and duties of the serv-
 22 ice provider with a volunteer service organization or
 23 governmental entity.

24 **SEC. 4. APPLICABILITY.**

25 (a) IN GENERAL.—

1 (1) COVERED CLAIMS.—Subject to paragraph
2 (2), this Act governs any claim for damages in any
3 civil action brought in any State or Federal court in
4 any case in which the claim relates to—

5 (A) volunteer services performed by the de-
6 fendant for a governmental entity or a volun-
7 teer service organization; or

8 (B) activities or services performed by a
9 volunteer service organization.

10 (2) ACTIONS EXCLUDED.—The limitations on
11 damages contained in this Act shall not apply in any
12 action described in subparagraph (A) or (B) of para-
13 graph (1) in any case in which—

14 (A) the misconduct for which damages are
15 awarded —

16 (i) constitutes a crime of violence (as
17 that term is defined in section 16 of title
18 18, United States Code) or an act of inter-
19 national terrorism (as that term is defined
20 in section 2331(1) of title 18, United
21 States Code) for which the defendant has
22 been convicted in any court;

23 (ii) constitutes a hate crime (as that
24 term is used in the Hate Crime Statistics

1 Act (28 U.S.C. 534 note)) for which the
2 defendant has been convicted in any court;

3 (iii) involves a sexual offense, as de-
4 fined by applicable State law, for which the
5 defendant has been convicted in any court;

6 or

7 (iv) involves misconduct for which the
8 defendant has been found to have violated
9 a Federal or State civil rights law for
10 which the defendant has been convicted in
11 any court; or

12 (B) the defendant was found to be under
13 the influence (as determined pursuant to appli-
14 cable State law) of intoxicating alcohol or any
15 drug, at the time of the misconduct for which
16 damages are awarded and such influence was a
17 proximate cause of the harm that is the subject
18 of the action.

19 (b) RELATIONSHIP TO STATE LAW.—This Act super-
20 sedes State law only to the extent that State law applies
21 to an issue covered by this Act. Any issue (including any
22 standard of liability) that is not governed by this Act shall
23 be governed by otherwise applicable State or Federal law.

24 (c) EFFECT ON OTHER LAW.—Nothing in this Act
25 shall be construed to—

1 (1) waive or affect any defense of sovereign im-
2 munity asserted by any State under any law;

3 (2) supersede or alter any other Federal law;

4 (3) waive or affect any defense of sovereign im-
5 munity asserted by the United States;

6 (4) affect the applicability of any provision of
7 chapter 97 of title 28, United States Code;

8 (5) preempt State choice-of-law rules with re-
9 spect to claims brought by a foreign nation or a citi-
10 zen of a foreign nation;

11 (6) affect the right of any court to transfer
12 venue or to apply the law of a foreign nation or to
13 dismiss a claim of a foreign nation or of a citizen
14 of a foreign nation on the ground of inconvenient
15 forum; or

16 (7) supersede or modify any statutory or com-
17 mon law, including any law providing for an action
18 to abate a nuisance, that authorizes a person to in-
19 stitute an action for civil damages or civil penalties,
20 cleanup costs, injunctions, restitution, cost recovery,
21 punitive damages, or any other form of relief for re-
22 mediation of the environment (as defined in section
23 101(8) of the Comprehensive Environmental Re-
24 sponse, Compensation, and Liability Act of 1980 (42
25 U.S.C. 9601(8)).

1 **SEC. 5. UNIFORM STANDARD FOR AWARD OF PUNITIVE**
2 **DAMAGES.**

3 Punitive damages may, to the extent permitted by ap-
4 plicable State or Federal law, be awarded against a de-
5 fendant if the claimant establishes by clear and convincing
6 evidence that conduct carried out by the defendant with
7 a conscious, flagrant indifference to the rights or safety
8 of others was the proximate cause of the harm that is the
9 subject of the action in any civil action for a claim de-
10 scribed in subparagraph (A) or (B) of section 4(a)(1).

11 **SEC. 6. LIMITATION ON THE AMOUNT OF PUNITIVE DAM-**
12 **AGES.**

13 The amount of punitive damages that may be award-
14 ed in an action described in section 5 shall not exceed the
15 lesser of—

16 (1) twice the sum of the amounts awarded to
17 the claimant for economic loss and noneconomic loss;
18 or

19 (2) \$250,000.

20 **SEC. 7. PREEMPTION.**

21 (a) IN GENERAL.—This Act does not—

22 (1) create a cause of action for punitive or com-
23 pensatory damages; or

24 (2) preempt or supersede any State or Federal
25 law to the extent that such law further limits the

1 amount of an award of punitive or compensatory
2 damages.

3 (b) REMITTITUR.—Nothing in this section shall mod-
4 ify or reduce the ability of courts to grant a remittitur.

5 **SEC. 8. APPLICATION BY COURT.**

6 The application of the limitation imposed by section
7 6 may not be disclosed to a jury by a court. Nothing in
8 this section authorizes the court to enter an award of pu-
9 nitive damages in excess of the initial award of punitive
10 damages awarded by a jury.

11 **SEC. 9. BIFURCATION AT REQUEST OF ANY PARTY.**

12 (a) IN GENERAL.—At the request of any party the
13 trier of fact, in any action for punitive damages that is
14 subject to this Act, shall consider in a separate proceeding,
15 held subsequent to the determination of the amount of
16 compensatory damages, whether punitive damages are to
17 be awarded for the harm that is the subject of the action
18 and the amount of the award.

19 (b) INADMISSIBILITY OF EVIDENCE RELEVANT ONLY
20 TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING
21 CONCERNING COMPENSATORY DAMAGES.—If any party
22 requests a separate proceeding under subsection (a), in a
23 proceeding to determine whether the claimant may be
24 awarded compensatory damages, any evidence, argument,
25 or contention that is relevant only to the claim of punitive

1 damages, as determined by applicable State law, shall be
2 inadmissible.

3 **SEC. 10. LIABILITY FOR COMPENSATORY DAMAGES.**

4 (a) GENERAL RULE.—In any action described in sub-
5 paragraph (A) or (B) of section 4(a)(1) brought against
6 more than one defendant, the liability of each defendant
7 for compensatory damages shall be determined in accord-
8 ance with this section.

9 (b) AMOUNT OF LIABILITY FOR COMPENSATORY
10 DAMAGES.—

11 (1) IN GENERAL.—Each defendant shall be lia-
12 ble only for the amount of compensatory damages
13 allocated by the trier of fact to the defendant in di-
14 rect proportion to the percentage of responsibility of
15 the defendant (determined in accordance with para-
16 graph (2)) for the harm to the claimant with respect
17 to which the defendant is found to be liable. The
18 court shall render a separate judgment against each
19 defendant in an amount determined pursuant to the
20 preceding sentence.

21 (2) PERCENTAGE OF RESPONSIBILITY.—For
22 purposes of determining the amount of compen-
23 satory damages allocated to a defendant under this
24 section, the trier of fact in an action described in
25 subsection (a) shall determine the percentage of re-

- 1 sponsibility of each person responsible for the harm
- 2 to the claimant, without regard to whether that per-
- 3 son is party to the action.

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